JUDICIAL ASSISTANCE

Agreement Between the
UNITED STATES OF AMERICA
and CHINA

Signed at Beijing June 19, 2000

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

CHINA

Judicial Assistance

Agreement signed at Beijing June 19, 2000;
Entered into force March 8, 2001.

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and the Government of the People's Republic of China, hereinafter referred to as "the Parties,"

Desiring to improve the effectiveness of cooperation between the two countries in respect of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty, equality and mutual benefit,

Have agreed as follows:

Article 1

Scope of Application

1. In accordance with this Agreement, the Parties shall provide mutual assistance in investigations, in prosecutions, and in proceedings related to criminal matters.

2. Assistance shall include:

(a) serving documents;

(b) taking the testimony or statements of persons;

(c) providing originals, certified copies or photocopies of documents, records or articles of evidence;

(d) obtaining and providing expert evaluations;

(e) making persons available to give evidence or assist in investigations;

(f) locating or identifying persons;

(g) executing requests for inquiry, searches, freezing and seizures of evidence;

(h) assisting in forfeiture proceedings;

(i) transferring persons in custody for giving evidence or assisting in investigations; and

(j) any other form of assistance which is not contrary to the laws in the territory of the Requested Party.

3. This Agreement is intended solely for mutual legal assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Agreement.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the People's Republic of China, the Central Authority shall be the Ministry of Justice.

3. The Central Authorities shall communicate directly with one another for the purposes of this Agreement.

Article 3

Limitations on Assistance

1. The Central Authority of the Requested Party may deny assistance if:

(a) the request relates to conduct that would not constitute an offense under the laws in the territory of the Requested Party, provided that the Parties may agree to provide assistance for a particular offense, or category of offenses, irrespective of whether the conduct would constitute an offense under the laws in the territory of both Parties;

(b) the request relates to an offense that is a purely military offense;

(c) the execution of the request would prejudice the sovereignty, security, public order (ordre publique), important public policy or other essential interests of the Requested Party;

(d) the request relates to a political offense or the request is politically motivated or there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing, or otherwise proceeding against a person on account of the person's race, religion, nationality, or political opinions;

(e) the execution of the request would be contrary to the Constitution of the Requested Party;

(f) the Requested Party has already rendered a final decision on the same suspect or defendant for the same offense as related to in the request; or

(g) the assistance requested lacks substantial connection with the case.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested Party refuses assistance, it shall inform the Central Authority of the Requesting Party of the reasons for the refusal.

Article 4
Form and Contents of Requests

1. The request shall include the following:

(a) the name of the competent authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including a summary of relevant facts, the relevant provisions of laws, the specific criminal offenses which relate to the matter and any punishment that might be imposed for each offense;

(c) the purpose and relevance for which the evidence, information, or other assistance is sought;

(d) the time limit within which compliance with the request is desired; and

(e) a description of the evidence, information, or other assistance sought.

2. To the extent necessary and possible, a request shall also include:

(a) information on the name, sex, nationality, occupation and location of any person from whom evidence is sought;

(b) information on the name, sex, nationality, occupation and location of a person to be served and that person's relationship to the proceedings;

(c) a precise description of the place or person to be searched;

(d) the information required for executing Article 14 of this Agreement;

(e) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;

(f) the need for confidentiality and the reasons therefor;

(g) a description of any particular procedure to be followed in executing the request;

(h) a list of questions to be asked of a witness;

(i) information on the identity and whereabouts of a person to be located; and

(j) any other information which may facilitate execution of the request.

3. If the Requested Party considers the contents contained in the request not sufficient to enable the request to be dealt with, it may request additional information.

4. A request for assistance shall be in writing and affixed with the signature or seal of the Central Authority of the Requesting Party except that the Central Authority of the Requested Party may accept a request in another form in urgent situations. In any such case, the request shall be confirmed in writing within fifteen days thereafter unless the Central Authority of the Requested Party agrees otherwise.

5. A request for assistance and its supporting documents shall not require any form of certification or authentication.

Article 5

Language

Requests and the supporting documents made pursuant to this Agreement shall be accompanied by a translation in the language of the Requested Party, unless otherwise agreed by the Central Authorities.

Article 6

Execution and Postponement of Requests

1. The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through the appropriate competent authorities. The Requested Party shall do everything in its power to execute the request.

2. The Central Authority of the Requested Party shall make all necessary arrangements for and meet the costs of the representation of the Requesting Party in the territory of the Requested Party in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws in the territory of the Requested Party. Insofar as consistent with the laws in the territory of the Requested Party, the request for assistance shall be executed in the manner requested by the Requesting Party.

4. If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that Party, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall respond to reasonable requests by the Central Authority of the Requesting Party on progress toward execution of the request.

6. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the assistance requested cannot be provided or is postponed, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons.

Article 7
Confidentiality and Limitations on Use

1. The Requested Party shall keep confidential a request and its contents, including any supporting documents, and any action taken pursuant to the request, if requested by the Requesting Party. If confidentiality cannot be guaranteed or if the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested Party shall so inform the Central Authority of the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requested Party may require the Requesting Party to keep confidential the information or evidence provided by it, or to use such information or evidence only under the terms and conditions stated by it. If the Requesting Party agrees to accept the information or evidence under the above-mentioned terms and conditions, it shall comply with them. To this end, the Central Authorities of both parties may consult with each other on the terms and conditions concerned.

3. The Requesting Party shall not use any information or evidence provided under this Agreement for any purpose other than for the case described in the request without the consent of the Central Authority of the Requested Party.

4. Nothing in this Agreement shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or

fundamental principles of law of the Requesting Party in a criminal prosecution. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.

5. Information or evidence which has been made public in the territory of a Party in accordance with paragraph 1 or 2 will no longer be subject to confidentiality or to the requirements of paragraph 3 of this Article.

Article 8
Service of Documents

1. Upon the request of the Requesting Party, the Requested Party shall use its best efforts to effect service of any document except that the Requested Party shall not be obligated to effect service of a document which requires a person to appear as the accused.

2. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party no less than forty-five days before the scheduled appearance unless, in urgent cases, the Requested Party has agreed to a shorter period of time.

3. The Requested Party shall, after effecting service, forward to the Requesting Party a proof of service that shall include the description of the date, place and manner of service, and be affixed with the signature or seal of the authority which served the document. If, in a particular case, it is necessary to vary these requirements, the Requesting Party shall include such requirements in the request. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

Article 9

Taking Evidence in the Requested Party

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Agreement shall be compelled, if necessary and in conformity with the laws in the territory of the Requested Party, to appear and testify or produce evidence, including documents, records, or articles.

2. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

3. The Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to pose questions and make a verbatim transcript in a manner agreed to by the Requested Party insofar as not contrary to the laws in the territory of the Requested Party.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws in the territory of the Requesting Party, the evidence taking shall not be impeded and the claim shall be made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

5. Insofar as not contrary to the laws of the Requested Party, evidence produced pursuant to this Article shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Party in order to make it admissible according to the laws of the Requesting Party.

6. When the request for assistance concerns the transmission of documents or records, the Requested Party may transmit certified copies or photocopies thereof. However, where the Requesting party explicitly requires transmission of originals, the Requested Party shall meet the requirement to the extent possible.

Article 10

Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the territory of the Requested Party.

2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency in that Party but which are not publicly available. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Insofar as not contrary to the laws of the Requested Party, evidence produced pursuant to this Article shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Party in order to make it admissible according to the laws of the Requesting Party.

Article 11

Availability of Persons to Give Evidence or Assist in Investigation in the Territory of the Requesting Party

1. When the Requesting Party requests the appearance of a person to give evidence or assist in investigation in the territory of the Requesting Party, the Requested Party shall invite the person to appear before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

2. The Requested Party may request the Requesting Party to make a commitment that a person who has been asked to be present in the territory of the Requesting Party according to this Article not be prosecuted, detained, subject to service of process or subject to any other restriction of personal liberty, for any acts or omissions or

convictions which preceded such person's entry into the territory of the Requesting Party, and that such person shall not be obliged to give evidence or assist in any investigation, prosecution or proceeding other than that to which the request relates, except with the prior consent of the Requested Party and such person. The person whose presence is requested may decline to comply with the request if the Requesting Party does not grant such assurances. If the Requesting Party grants assurances, it shall also specify the length of time and conditions under which such assurances shall apply.

3. A person who declines an invitation under this Article to give evidence or assist in an investigation shall not, by reason of so declining, be liable to any penalty or subject to any compulsory measures of restriction of personal liberty.

Article 12
Transfer of Persons in Custody for Giving Evidence or Assisting in Investigations

1. A person in the custody of the Requested Party whose presence in the territory of the Requesting Party is sought for purposes of assistance under this Agreement may be transferred from the Requested Party to the Requesting Party for that purpose if the person consents and if the Central Authorities of both Parties agree.

2. A person in the custody of the Requesting Party whose presence in the territory of the Requested Party is sought for purposes of assistance under this Agreement may be transferred from the Requesting Party to the Requested Party if the person consents and if the Central Authorities of both Parties agree.

3. For purposes of this Article:

(a) the receiving Party shall have the obligation, in accordance with its laws, to keep the person transferred in custody unless otherwise authorized by the sending Party;

(b) the receiving Party shall return the person transferred to the sending Party as soon as he is finished giving evidence or assisting in investigations or within the period agreed by the Parties;

(c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

Article 13
Location or Identification of Persons or Items

The Requested Party shall, in accordance with the request, endeavor to find out the location or identity of the person or item referred to in the request. For this purpose, the Requesting Party shall provide information on the possible presence of the person or item in the territory of the Requested Party.

Article 14
Inquiry, Search, Freezing and Seizure

1. The Requested Party shall, insofar as national law permits, execute a request for inquiry, search, freezing and seizure of evidential materials and articles.

2. The Requested Party shall provide the Requesting Party with such information as may be required concerning the result of executing the above request and the subsequent custody of the materials and articles.

3. If the Requesting Party agrees to the terms and conditions of transmission required by the Requested Party, the Requested Party shall transmit to the Requesting Party the materials and articles seized.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

5. Insofar as not contrary to the laws of the Requested Party, information regarding custody, identity and condition of seized items shall be certified in a form as may be requested by the Requesting Party in order to make them admissible according to the laws of the Requesting Party.

Article 15
Return of Documents, Records, and Articles of Evidence to the Requested Party

The Central Authority of the Requested Party may require that the Central Authority of the Requesting Party return any documents, records, or articles of evidence furnished to it in execution of a request under this Agreement as soon as possible.

Article 16
Assistance in Forfeiture Proceedings

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offenses which are located in the other Party and may be forfeitable or otherwise subject to seizure, it may so inform the Central Authority of that other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws in the territory of their country, and shall, through their Central Authority, inform the first Party of the action taken.

2. The Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses. This may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. To the extent permitted by its own laws, and under the terms and conditions agreed to by both Parties, a Party may transfer all or part of such proceeds, or instrumentalities of offenses, or the proceeds of the sale of such assets to the other Party.

4. In the application of this Article, the legitimate rights of the Requested Party and any third party to such proceeds, shall be respected under the laws of the Requested Party.

Article 17
Notification of Results of Proceedings in Criminal Matters

One Party shall, upon request, inform the other Party of results of criminal proceedings which were the subject of the Requesting Party's prior request under this Agreement.

Article 18
Exchange of Information

The Parties may, upon request, use this Agreement to consult on criminal justice matters, including informing each other of the laws in force or the laws which used to be in force and the judicial practices in their respective countries.

Article 19

Criminal Records

The Requested Party shall provide the Requesting Party with the criminal records and information of the sentence against the person being investigated or prosecuted in a criminal matter in the territory of the Requesting Party, if the person has ever been prosecuted for criminal liability in the territory of the Requested Party.

Article 20

Expenses

1. The Requested Party shall pay the costs for executing the request, but the Requesting Party shall bear:

(a) the allowances or expenses for the travel of persons under Articles 11 and 12 of this Agreement in accordance with the standards or regulations of the Requesting Party;

(b) the allowances or expenses for persons to travel to and from and stay in the Requested Party under Article 9(3) of this Agreement;

(c) the expenses and fees of experts; and

(d) the costs of translations, interpretations, and transcription.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the request can be executed.

Article 21

Other Bases for Cooperation

Assistance and procedures set forth in this Agreement shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable

international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any other arrangement, agreement, or practice which may be applicable.

Article 22
Consultation and Settlement of Disputes

1. The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Agreement. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

2. Any dispute arising out of the interpretation and application of this Agreement shall be resolved through diplomatic channels if the Central Authorities of both Parties are themselves unable to reach agreement.

Article 23
Entry Into Force, Modification and Termination

1. Each Party shall inform the other by diplomatic note when all necessary steps have been taken under its laws for entry into force. This Agreement shall enter into force upon the thirtieth day from the date of the later diplomatic note. The Agreement shall remain in force for a period of three years, and shall renew for successive five year periods, unless either Party, within six months of the end of any such period, shall provide written notice to the other Party of its desire to enter into consultations for the purpose of modifying any provision of this Agreement.

2. Either Party may terminate this Agreement at any time by means of written notice to the other Party through the diplomatic channel. Termination shall take effect six months following the date of notification.

3. This Agreement may be modified at any time by mutual written agreement between the Parties.

4. This Agreement applies to any request presented after its entry into force even if the relevant offenses occurred before this Agreement enters into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Beijing this 19th day of June, 2000, in duplicate, in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

美利坚合众国政府和
中华人民共和国政府
关于刑事司法协助的协定

美利坚合众国政府和中华人民共和国政府，以下简称“双方”，

愿意在相互尊重主权和平等互利的基础上，促进两国在刑事司法协助方面的有效合作，

达成协议如下：

第一条　适用范围

一、根据本协定，双方应在与刑事案件有关的侦查、起诉和诉讼方面相互提供协助。

二、协助应包括：

（一）送达文书；

（二）获取人员的证言或陈述；

（三）提供文件、记录或证据物品的原件、经证明的副本或影印件；

（四）获取并提供鉴定结论；

(五)安排人员作证或协助调查;

(六)查找或辨别人员;

(七)执行查询、搜查、冻结和扣押证据的请求;

(八)在没收程序中提供协助;

(九)移送在押人员以便作证或协助调查;以及

(十)不违背被请求方境内法律的任何其他形式的协助。

三、本协定仅适用于双方之间的相互司法协助。本协定的规定,不给予任何私人当事方以取得、隐瞒或排除任何证据或妨碍执行请求的权利。

第二条 中央机关

一、双方应各自指定一个中央机关,负责依照本协定提出和接收请求。

二、在美利坚合众国方面,中央机关为司法部长或由司法部长指定的人;在中华人民共和国方面,中央机关为司法部。

三、为本协定之目的,双方的中央机关应相互直接联系。

第三条　协助的限制

一、有下列情形之一的，被请求方中央机关可拒绝提供协助：

（一）请求涉及的行为根据被请求方境内的法律不构成犯罪；但双方可以商定，就某一特定犯罪或特定领域的犯罪提供协助，不论该行为是否根据双方境内的法律均构成犯罪；

（二）请求涉及的犯罪纯属军事犯罪；

（三）执行请求将会损害被请求方的主权、安全、公共秩序、重大公共政策或其他根本利益；

（四）请求涉及政治犯罪，或请求系出于政治动机，或有充足理由认为，请求的目的是基于某人的种族、宗教、国籍或政治见解而对该人进行侦查、起诉、处罚或其他诉讼程序；

（五）执行请求将有悖于被请求方宪法；

（六）被请求方已经对请求所涉及的同一犯罪嫌疑人或被告人就同一犯罪作出最终裁决；或

（七）请求提供的协助与案件缺乏实质联系。

二、在根据本条拒绝协助前，被请求方中央机关应与

请求方中央机关协商，考虑可否在其认为必要的条件下给予协助。如果请求方接受附加条件的协助，则应遵守这些条件。

三、被请求方中央机关如果拒绝协助，应将拒绝的理由通知请求方中央机关。

第四条　请求的形式和内容

一、请求应包括以下内容：

（一）请求所涉及的侦查、起诉或诉讼的主管机关的名称；

（二）关于侦查、起诉或诉讼的事项及其性质的说明，包括有关事实的概述、有关法律规定和该事项所涉及的具体刑事犯罪，以及就每项犯罪可能给予的任何处罚；

（三）要求提供证据、资料或其他协助的目的和相关性；

（四）希望请求得以执行的时限；以及

（五）关于所要求提供的证据、资料或其他协助的说明。

二、在必要和可能的范围内，请求还应包括：

（一）关于任何被取证人员的姓名、性别、国籍、职业

和所在地的资料;

(二)关于受送达人的姓名、性别、国籍、职业和所在地的资料,以及有关该人与诉讼的关系的资料;

(三)关于需搜查的地点或人员的准确说明;

(四)执行本协定第十四条所需要的资料;

(五)关于被要求前往请求方境内的人员有权得到的津贴和费用的资料;

(六)保密的需要及其理由;

(七)关于执行请求时应遵循的特定程序的说明;

(八)询问证人的问题单;

(九)关于需查找的人员的身份及其下落的资料;以及

(十)有助于执行请求的任何其他资料。

三、如果被请求方认为,请求中包括的内容不足以使其处理该请求,被请求方可要求提供补充资料。

四、协助请求应以书面形式提出,并由请求方中央机关签署或盖章,除非被请求方中央机关在紧急情况下接受其他形式的请求。在后一种情况下,该请求应在随后的十五天内以书面形式确认,但被请求方中央机关另行同意的除外。

五、协助请求及其辅助文件无需任何形式的证明或认证。

第五条　文　　字

根据本协定提出的请求及其辅助文件，应附有被请求方文字的译文，但双方中央机关另有约定的除外。

第六条　请求的执行和推迟执行

一、被请求方中央机关应迅速执行请求，或者安排通过适当的主管机关执行。被请求方应在其权力范围内尽最大努力执行请求。

二、被请求方中央机关应作出一切必要的安排，在被请求方境内因协助请求而产生的任何程序中为请求方提供代表并承担费用。

三、协助请求应按照被请求方境内的法律予以执行。在符合被请求方境内的法律的前提下，协助请求应按照请求方所要求的方式予以执行。

四、如果被请求方中央机关认为，请求的执行将会影响该方正在进行的刑事侦查、起诉或诉讼，可推迟执行，或在与请求方中央机关磋商后，在认定为必要的条件下予以执行。如果请求方接受附加条件的协助，则应遵守这些条

件。

五、被请求方中央机关应对请求方中央机关就执行请求的进度所提出的合理要求作出回应。

六、被请求方中央机关应将执行请求的结果迅速通知请求方中央机关。如果不能提供或推迟提供所请求的协助，被请求方中央机关应将理由通知请求方中央机关。

第七条　保密和限制使用

一、如果请求方提出要求，被请求方应对请求及其内容，包括任何辅助文件，以及按照该请求所采取的任何行动予以保密。如果无法保证保密或者不违反保密要求则无法执行请求，被请求方中央机关应将此情况通知请求方中央机关。请求方中央机关应随即决定是否仍应执行该请求。

二、被请求方可以要求请求方对其所提供的资料或证据予以保密，或者仅在其指明的条件下使用。如果请求方同意在上述条件下接受资料或证据，则应遵守这些条件。为此目的，双方中央机关可就有关条件进行协商。

三、未经被请求方中央机关同意，请求方不得为了请求所述案件之外的任何其他目的使用根据本协定提供的任

何资料或证据。

四、本协定的任何条款均不妨碍请求方在其宪法或法律基本原则下的义务范围内，在刑事诉讼中使用或披露资料。请求方应将任何此种披露事先通知被请求方。

五、已经根据第一、二款在一方境内公开的资料或证据，不再受保密或本条第三款的要求的限制。

第八条　送达文书

一、根据请求方的请求，被请求方应尽最大努力送达任何文书，但是对于要求某人作为被告人出庭的文书，被请求方不负有执行送达的义务。

二、要求某人在请求方的机关出庭的文书送达请求，请求方应在离预定的出庭日期至少四十五天前转交，除非被请求方同意在紧急情形下在较短期限内转交。

三、被请求方在执行送达后，应向请求方出具送达证明。送达证明应包括送达日期、地点和送达方式的说明，并应由送达文书的机关签署或盖章。如果在特定案件中需要改变上述要求，请求方应在请求中予以说明。如果不能执行送达，则应通知请求方，并说明理由。

第九条　在被请求方调取证据

一、对于根据本协定要求向其取证的被请求方境内的人，应在必要时，并在符合被请求方境内法律的情况下，强制其出庭并提供证言或出具证据，包括文件、记录或物品。

二、被请求方中央机关应根据请求，事先提供依本条取证的时间和地点方面的资料。

三、在不违背被请求方境内的法律的前提下，被请求方应允许请求中指明的人在执行请求过程中到场，并允许其按照被请求方同意的方式提出问题和进行逐字记录。

四、如果第一款提及的人主张，根据请求方境内的法律属无行为能力或享有豁免或特权，仍不妨碍取证的进行，但应将该人的主张告知请求方中央机关，由请求方的机关予以解决。

五、在不违背被请求方法律的前提下，根据本条提供的证据应按照请求方要求的形式或附加证明予以转递，以便使其可依请求方法律得以接受。

六、如果协助请求涉及转递文件或记录，被请求方可转递经证明的副本或影印件。但在请求方明确要求转递原

件的情况下，被请求方应在可能的范围内满足这一要求。

第十条　政府机构记录

一、被请求方应向请求方提供被请求方境内的政府部门和机构所拥有的、已公开的记录的副本，包括任何形式的文件和资料的副本。

二、被请求方可以提供该方政府部门或机构所拥有的任何未公开的文件、记录或资料的副本。被请求方可自行酌定，全部或部分拒绝根据本款提出的请求。

三、在不违背被请求方法律的前提下，根据本条提供的证据应按照请求方要求的形式或附加证明予以转递，以便使其可依请求方法律得以接受。

第十一条　安排有关人员到请求方作证或协助调查

一、当请求方要求某人到其境内作证或协助调查时，被请求方应请该人前往请求方境内的有关机关。请求方应说明所付费用的范围。被请求方中央机关应将该人的答复迅速通知请求方中央机关。

二、被请求方可要求请求方承诺，对于根据本条被要

求到请求方境内的人员，不得因该人进入请求方境内之前的任何作为或不作为或定罪而予以起诉、羁押、发出传票或以其他形式限制其人身自由，也不应强制该人在该请求所未涉及的任何其他侦查、起诉或诉讼中作证或协助调查，除非事先取得被请求方和该人的同意。如果请求方不能作出上述保证，则被要求前往的人可以拒绝接受要求。如果请求方作出上述保证，则还应具体说明该项保证的适用期限与条件。

三、对于拒绝接受按照本条提出的作证或协助调查要求的人，不得因此种拒绝而给予任何处罚或采取任何限制其人身自由的强制措施。

第十二条　移送在押人员以便作证或协助调查

一、如果为本协定规定的协助的目的而要求羁押在被请求方境内的人前往请求方，在该人及双方中央机关同意的情况下，可为此目的将该人从被请求方移送到请求方。

二、如果为本协定规定的协助的目的而要求羁押在请求方境内的人前往被请求方，在该人及双方中央机关同意的情况下，可将该人从请求方移送到被请求方。

三、为本条的目的：

（一）接收方有义务根据本国法律继续羁押被移送人，但移送方另有授权的除外；

（二）接收方应当在被移送人作证或协助调查完毕后或在双方商定的期限内，将被移送人送回移送方；

（三）接收方不得要求移送方就被移送人的送回提出引渡程序；并且

（四）被移送人在接收方受羁押的时间，应折抵在移送方被判处的服刑期。

第十三条　查找或辨认人员或物品

被请求方应根据请求，尽力查找或辨认请求中所指的人员或物品。为此目的，请求方应提供关于该人或物品在被请求方境内的可能所在地的资料。

第十四条　查询、搜查、冻结和扣押

一、被请求方应在本国法律允许的前提下，执行查询、搜查、冻结和扣押证据材料和物品的请求。

二、被请求方应向请求方提供其所要求的有关执行上

述请求的结果以及有关材料和物品随后被监管的情况。

三、如果请求方同意被请求方就移交所提出的条件，被请求方应将被扣押的材料和物品移交给请求方。

四、被请求方中央机关可要求请求方同意其为了保护第三人对于被移交物品的利益而提出的必要条件。

五、在不违背被请求方法律的前提下，有关被扣押物品的监管、特征与状态方面的情况应按照请求方要求的形式出具证明，以便使其可依请求方法律得以接受。

第十五条　向被请求方归还文件、记录和证据物品

被请求方中央机关可要求请求方中央机关尽快归还根据本协定执行请求时向其提供的任何文件、记录或证据物品。

第十六条　没收程序中的协助

一、如果一方中央机关获悉，犯罪所得或犯罪工具处于另一方境内，并可能是可没收的或可予以扣押，前一方应将此情况通知该另一方中央机关。如果该另一方对此有管辖权，则可将此情况通知其主管机关，以便确定采取行

动是否适当。上述主管机关应根据其本国境内的法律作出决定，并通过其中央机关向前一方通报所采取的行动。

二、双方在各自法律许可的范围内，应在没收犯罪所得和犯罪工具的程序中相互协助。其中可包括在等候进一步程序前为临时冻结、扣押犯罪所得或犯罪工具所采取的行动。

三、收管犯罪所得或犯罪工具的一方应依其本国法律，处置这些犯罪所得或犯罪工具。在其法律允许的范围内及双方商定的条件下，一方可将上述犯罪所得或犯罪工具的全部或部分或出售有关资产的所得移交给另一方。

四、在适用本条时，被请求方和任何第三人对这些财物的合法权利应依被请求方法律受到尊重。

第十七条 通报刑事诉讼结果

一方应根据请求，向另一方通报请求方先前根据本协定提出的请求所涉及的刑事诉讼的结果。

第十八条 情报交流

双方可根据请求，利用本协定，就刑事司法事宜进行

磋商，包括相互通报各自国家现行的或者过去实施的法律和司法实践情况。

第十九条　犯罪记录

如果在请求方境内受到刑事侦查或起诉的人曾在被请求方境内受过刑事起诉，则被请求方应向请求方提供有关该人的犯罪记录和对该人判刑的情况。

第二十条　费　　用

一、被请求方应支付执行请求的费用，但请求方应负担：

（一）根据请求方的标准和规定，支付本协定第十一条和第十二条规定的人员的津贴或旅费；

（二）有关人员按照第九条第三款的规定，前往、停留和离开被请求方的费用；

（三）鉴定人的费用和报酬；以及

（四）笔译、口译及誊写费用。

二、如果执行请求明显地需要超常性质的费用，双方应协商决定请求可予执行的条件。

第二十一条　其他合作基础

本协定规定的协助和程序不妨碍任何一方通过其他可适用的国际协议中的条款或通过本国法律的条款向另一方提供协助。双方也可根据任何其他可适用的安排、协议或惯例提供协助。

第二十二条　磋商与争议的解决

一、双方中央机关应在双方同意时进行磋商，以促进最有效地利用本协定。双方中央机关还可商定为便于实施本协定而必须采取的实际措施。

二、因本协定的解释和适用产生的争议，如果双方中央机关不能自行达成协议，应通过外交途径解决。

第二十三条　生效、修改和终止

一、双方依照各自法律完成使本协定生效的一切必要步骤后，应以外交照会相互通知。本协定自后一份照会发出之日起第三十天生效。本协定的有效期为三年，然后以

五年期限连续延期，除非任何一方在上述任一期限届满日的六个月前书面通知另一方其希望就修改本协定任何条款而进行磋商。

二、任何一方可随时通过外交途径，以书面形式通知对方终止本协定。协定的终止自通知之日起的六个月后生效。

三、本协定经双方书面协议可随时进行修改。

四、本协定适用于其生效后提出的任何请求，即使有关犯罪发生于本协定生效前。

下列签署人经各自政府适当授权，签署本协定，以昭信守。

二〇〇〇年 六 月 十 九日订于北京，一式两份，每份均用英文和中文写成，两种文本同等作准。

美利坚合众国政府代表　　中华人民共和国政府代表

张业遂